he (they) may, at any time prior to the mailing of notice of the decision, reopen the hearing record for the receipt of such evidence. The order in which the evidence and the allegations shall be presented and the conduct of the hearing shall be at the discretion of the hearing officer(s).

§405.1821 Prehearing discovery and other proceedings prior to the intermediary hearing.

(a) Prehearing discovery shall be permitted upon timely request of any party. To be timely, a request for discovery and inspection shall be made before the beginning of the hearing. A reasonable time for inspection and reproduction of documents shall be provided by order of the hearing officer(s).

(b) If, in the discretion of the hearing officer(s), the purpose of defining the issues more clearly would be served, the hearing officer(s) may schedule a prehearing conference. For this purpose, a single member of a panel of hearing officers, when such is the case, may be appointed to act for the panel with respect to prehearing activities.

§405.1823 Evidence at intermediary hearing.

Evidence may be received at the intermediary hearing even though inadmissible under the rules of evidence applicable to court procedure. The hearing officer(s) shall give the parties opportunity for submission and consideration of facts and arguments, and during the course of the hearing, should in ruling upon admissibility of evidence, exclude irrelevant, immaterial, or unduly repetitious evidence. The hearing officer(s) shall render a final ruling on the admissibility of evidence.

§405.1825 Witnesses at intermediary hearing.

The hearing officer(s) may examine the witnesses and shall allow the parties and their representatives to do so. Parties to the proceedings may also cross-examine witnesses.

§405.1827 Record of intermediary hearing.

A complete recordation of the proceedings at the intermediary hearing shall be made and transcribed in all cases. It shall be made available to any party upon request. The record will not be closed until a decision (see §405.1831) has been issued.

§405.1829 Authority of hearing officer(s) at intermediary hearing.

(a) The hearing officer(s) in exercising his authority must comply with all the provisions of title XVIII of the Act and regulations issued thereunder, as well as with CMS Rulings issued under the authority of the Administrator of the Centers for Medicare & Medicaid Services (see 42 CFR 401.108), and with the general instructions issued by the Centers for Medicare & Medicaid Services in accordance with the Secretary's agreement with the intermediary.

(b) The determination of a fiscal intermediary that no payment may be made under title XVIII of the Act for any expense incurred for items and services furnished to an individual because such items and services are excluded from coverage pursuant to section 1862 of the Act, 42 U.S.C. 1395y (see subpart C of this part), shall not be reviewed by the hearing officer(s). Such determination shall be reviewed only in accordance with the applicable provisions of subparts G and H of this part.

§405.1831 Intermediary hearing decision and notice.

The hearing officer(s) shall, on a timely basis, render a decision in writing based on the evidence in the record; such decision shall constitute the final determination of the intermediary. In such decision, he will cite applicable law, regulations, CMS Rulings, and general instructions of the Centers for Medicare & Medicaid Services, as well as findings on all the matters in issue at the hearing. A copy of the decision will be mailed to all parties to the hearing at their last known addresses.

§405.1833 Effect of intermediary hearing decision.

The intermediary hearing decision provided for in §405.1831 shall be final and binding upon all parties to the

hearing unless such intermediary determination is revised in accordance with § 405.1885.

§ 405.1835 Right to Board hearing.

(a) *Criteria.* The provider (but no other individual, entity, or party) has a right to a hearing before the Board about any matter designated in § 405.1801(a)(1), if:

(1) An intermediary determination has been made with respect to the provider; and

(2) The provider has filed a written request for a hearing before the Board under the provisions described in § 405.1841(a)(1); and

(3) The amount in controversy (as determined in § 405.1839(a)) is $10,000 or more.

(b) *Prospective payment exceptions.* Except with respect to matters for which administrative or judicial review is not permitted as specified in § 405.1804, hospitals that are paid under the prospective payment system are entitled to hearings before the Board under this section if they otherwise meet the criteria described in paragraph (a) of this section.

(c) *Right to hearing based on late intermediary determination about reasonable cost.* Notwithstanding the provisions of paragraph (a)(1) of this section, the provider also has a right to a hearing before the Board if an intermediary's determination concerning the amount of reasonable cost reimbursement due a provider is not rendered within 12 months after receipt by the intermediary of a provider's perfected cost report or amended cost report (as permitted or as required to furnish sufficient data for purposes of making such determination—see § 405.1803(a)) provided such delay was not occasioned by the fault of the provider.

[48 FR 39835, Sept. 1, 1983]

§ 405.1837 Group appeal.

(a) *Criteria for group appeals.* Subject to paragraph (b) of this section, a group of providers may bring an appeal before the Board but only if—

(1) Each provider in the group is identified as one which would, upon the filing of a request for a hearing before the Board, but without regard to the $10,000 amount in controversy requirement, be entitled to a hearing under § 405.1835;

(2) The matters at issue involve a common question of fact or of interpretation of law, regulations or CMS Rulings; and

(3) The amount in controversy is, in the aggregate, $50,000 or more.

(b) *Providers under common ownership or control.* Effective April 20, 1983, any appeal filed by providers that are under common ownership or control must be brought by the providers as a group appeal in accordance with the provisions of paragraph (a) of this section with respect to any matters involving an issue common to the providers and for which the amount in controversy is, in the aggregate, $50,000 or more (see § 405.1841(a)(2)). A single provider involved in a group appeal that also wishes to appeal issues that are not common to the other providers in the group must file a separate hearing request (see § 405.1841(a)(1)) and must separately meet the requirements in § 405.1811 or § 405.1835, as applicable.

[48 FR 39836, Sept. 1, 1983]

§ 405.1839 Amount in controversy.

(a) *Single appeals.* The $1,000 amount in controversy required under § 405.1809 for an intermediary hearing and the $10,000 amount in controversy required under § 405.1835 for a Board hearing is, as applicable to the matters for which the provider has requested a hearing, the combined total of the amounts computed as follows:

(1) *Providers under prospective payment.* For providers that are paid under the prospective payment system, by deducting—

(i) The total of the payment due the provider on other than a reasonable cost basis under the prospective payment system from the total amount that would be payable after a recomputation that takes into account any exclusion, exception, adjustment, or additional payment denied the provider under part 412 of this chapter, as applicable;

(ii) The total of the payment due the provider on a reasonable cost basis under the prospective payment system from the total reimbursable costs claimed by the provider; and